

**INSTRUCTIONS FOR PRE-TRIAL STIPULATION FOR OTHER THAN
CREDIT CARD USE UNDER 11 U.S.C. 523(a)(2)(A)**

The parties to an adversary proceeding must comply with the following instructions in preparing a Pre-Trial Stipulation. These instructions are intended to supplement, not supplant, the requirements contained in Local Bankruptcy Rule 7016.

1. A model Pre-Trial Stipulation (“model”) is attached. Please see the separate “Judges Forms & Instructions” topic for a Pre-Trial Stipulation for credit card use under 11 U.S.C. 523(a)(2)(A). All other Pre-Trial Stipulations must follow the attached model.

2. Each Pre-Trial Stipulation must contain the following:

a. **Section I** - underlying issues of fact common to all claims for relief:

i. State whether each fact is contested or not contested. If the fact is contested, provide a brief statement of each party’s position, and list proposed witnesses and exhibits.

b. **Section II** - claims for relief:

i. Elucidate each claim for relief and affirmative defense. The elements establishing each claim for relief must be specified.

ii. State for each element of the claim for relief or affirmative defense whether it is contested or not contested. If it is contested:

- Provide a brief citation of authority for each counsel’s position.

- List the witnesses, admissions, and exhibits that reasonably pertain to each contested element.

- Note the elements established by pleading, admissions, and stipulations.

c. **Section III** - exhibits:

i. List each party’s exhibits.

ii. After each list, the opposing party must state whether he stipulates to the admission and authenticity of each exhibit. Copies of each exhibit must be attached unless the exhibit is to be used for impeachment purposes only. Copies must be legible.

iii. If a party does not stipulate to the admission of an exhibit, recite in a separately filed document any evidentiary objections and any response to said objections. See the model for filing and serving requirements. The court shall rule upon these objections at the Pre-Trial Conference. Any objections that could have been raised at this stage of the proceeding and are not shall be deemed waived.

d. **Section IV** - list of witnesses:

i. List the witnesses each party shall call to testify at trial.

ii. Summarize their intended testimony.

iii. Estimate the length of time for the direct and cross examination of each witness.

e. **Section V** - rebuttal testimony and Stipulation. See model.

3. Motions in limine must be filed and served before or concurrently with the pre-trial stipulation. Any response to the motion shall be filed and served two court days prior to the pre-trial conference.

SETTLEMENT INSTRUCTIONS

4. If the parties are considering or in the process of settling, the following instructions must be followed:

Unless a settlement is reached prior to the pre-trial conference date, a pre-trial stipulation must be timely filed and served. Failure to timely comply may result in sanctions.

A request for continuance of the pre-trial conference rarely will be granted if the reason for the request is that the “parties are discussing settlement” or “in the process of settling”.

5. If the parties *have settled*:

The pre-trial conference may be continued to allow for execution and filing the written settlement provided that the request for continuance contains a copy of the settlement or a substantial recitation of its terms.

Notice of the settlement must be filed at least two (2) court days prior to the pre-trial conference.

If the adversary is based on 11U.S.C. §523(c), then the settlement or stipulated judgment must contain an admission of liability under §523(a)(2), (4), (6) or (15) on behalf of the defendant for it not to be treated as a reaffirmation agreement controlled by §524. If no admission is present, then the requirements of §524(c) and (d) must be followed.

TRIAL INSTRUCTIONS

6. Trial dates are firm and continuances at the parties’ request are rarely granted.

7. The court generally will contact counsel the week before the scheduled trial date to determine any revised trial estimate times. If the parties reach a settlement prior to trial, they must inform the court promptly at (213) 894-3635. A written stipulation and proposed order must be filed at least two (2) court days prior to the trial date. A written settlement may be subject to review as discussed above in paragraph 5.

8. Trial exhibits and deposition transcripts must be marked in advance in compliance with the local rules. Please prepare at least four (4) exhibit sets (for counsel, opposing counsel, the court, and the witnesses). If the exhibits are longer than ten (10) pages, they should be assembled in binders and tabbed (with exhibit numbers for the plaintiff and letters for the defendant). An exhibit register must also be prepared in accordance with the local rules.

9. All trial briefs must be filed and served not less than four (4) court days in advance of the trial date, with conformed courtesy copies delivered to chambers.
10. Opening statements are welcome (but not usually necessary). Counsel should be prepared to complete closing argument as soon as the parties have rested. Post-trial briefs are appropriate only if ordered by the court.
11. Counsel are to instruct their witnesses to pause briefly before answering the question asked of them to allow opposing counsel to object. Objections are signaled to the court by standing prior to the witness's answer. In the event the witness begins the answer prior to counsel raising an objection, opposing counsel must wait until the witness is finished answering the questions before standing and raising the objection.

This is a model Pre-Trial stipulation. Please submit all stipulations, **other than** for credit card use under 11 U.S.C. 523(a)(2)(A), in this format. Please note: Any text in *italics* is for instructional purposes only and should NOT be included in the Order.

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re

DAVE DILL,

Debtor(s).

BK. No. LA 00-00000-VZ
Adv. No. LA 00-00000-VZ

Chapter 7

**PRE-TRIAL STIPULATION AND
ORDER FOR CLAIMS FOR RELIEF**

DATE: FEBRUARY 29, 20[xx]

TIME: 11:00 a.m.

**PLACE: 255 E. Temple Street
Courtroom 1368
Los Angeles, CA 90012**

JOAN JONES,

Plaintiff(s),
v.

DAVID DILL,

Defendant(s).

PRE-TRIAL STIPULATION

_____, plaintiff in this adversary proceeding ("Plaintiff") and _____, defendant in this adversary proceeding ("Defendant") SUBMIT THE FOLLOWING PRE-TRIAL STIPULATION AND ORDER through their respective counsels pursuant to Local Bankruptcy Rule 7016-1(b)(2).

I. UNDERLYING ISSUES OF FACT COMMON TO ALL CLAIMS FOR RELIEF

A. Defendant filed a petition for relief under Chapter 7 on December 31, 20[xx]. Plaintiff commenced this adversary proceeding by filing a complaint on January 31, 20[xx].

Not Contested: See IIA 1b below for an example of an issue that is contested.

B. Prior to filing bankruptcy, Plaintiff and Defendant entered into an oral agreement on October 1, 20[xx]. Plaintiff agreed to loan the Defendant \$5,000. Defendant agreed to repay Plaintiff \$500 per month beginning on November 1, 20[xx]. Thereafter, the payments were to be made monthly, until the loan was repaid. The loan was interest-free and unsecured.

Not Contested

C. Plaintiff and Defendant have been friends for approximately ten years, and lovers for the past five. Over the course of their friendship, Plaintiff has previously loaned Defendant money on five separate occasions. These loans were all made orally. Defendant repaid each of these loans in a timely manner.

Not Contested

D. Defendant has not made any payments on the \$5000 loan.

Contested

Plaintiff: After receiving the \$5000 loan, Defendant failed to make any payments on the loan and to date has not made any payments to reduce the balance of the loan which currently remains \$5000.

Defendant: A month after receiving the \$5000 loan, Defendant began making monthly

1 payments of \$500 for four months. To date, Defendant has repaid \$2000 to Plaintiff.
2

3 **II. CLAIMS FOR RELIEF**

4 A. **First Claim:** The debt should not be discharged because the debt was for money which was
5 obtained by actual fraud. (523(a)(2)(A))

6 **1. ELEMENTS OF THE CLAIM**

7 **a. A representation was made by the Defendant**

8 Not contested

9 **b. D knew the representation was false when made**

10 Contested

11 Plaintiff: The defendant said that he needed the \$5000 loan for a few weeks to
12 be able to meet some extra business expenses he had recently incurred. However, the defendant
13 didn't tell me that he was going to take a vacation and that he was taking a woman with him on
14 vacation.

15 **Evidence:**

16 Testimony of Joan Jones

17 Exhibit #1 Canceled check dated 10/1/20[xx]

18 Defendant: I did have additional expenses when I approached the Plaintiff
19 for the most recent loan of \$5,000. I had to go on a business trip, and I needed the money because
20 my company requires employees to pay for their own business expenses and then we are reimbursed
21 after we submit an expense report. The woman who accompanied me on the trip was a business
22 associate.

23 **Evidence:**

24 Testimony of Dave Dill

25 Testimony of Sally Smith

26 Exhibit #2 Expense report dated 10/15/20[xx]

c. Defendant made the representation with the intent to deceive

Contested: See II(A)(1)(b)

d. Plaintiff justifiably relied on the representation

Not Contested

e. Plaintiff was injured

Not Contested

f. The Defendant's conduct was the proximate cause of the injury

Not Contested

B. **Second Claim**: The debt should not be discharged because the debt was obtained by fraud or defalcation while the Defendant was acting in a fiduciary capacity. (523(a)(4))

1. ELEMENTS OF THE CLAIM

a. Defendant owned a fiduciary duty to Plaintiff

Contested

Plaintiff: The Defendant and I have been friends and lovers for many years. Our relationship is based upon trust. It was reasonable for me to believe that the loan would be repaid.

Evidence:

Testimony of Joan Jones

Defendant: Recently, our relationship has been very strained. At the time I filed my bankruptcy petition, I was in the process of moving out of Plaintiff's house, and ending our relationship. On numerous occasions prior to my bankruptcy petition, Plaintiff accused me of seeing other women. She would call work to see if I had left for the day and be outraged if I didn't come straight home. She frequently stated that she "didn't trust me as far as she could throw me."

Evidence:

Testimony of Dave Dill

Testimony of Sally Smith

b. Defendant breached the fiduciary duty.

Contested

Plaintiff: I believed that based upon our loving, trusting relationship, the Defendant would repay the debt. I didn't think that a written contract was necessary because he has previously repaid all of the money that I have loaned him.

Evidence:

Testimony of Joan Jones

Defendant: I didn't breach any fiduciary duty as Plaintiff knew that our relationship was ending. She knew that I was moving into my own apartment, and that I was interested in pursuing other relationships. She loaned me the money hoping that I would feel obligated to her and thus would not end our relationship.

Evidence:

Testimony of Dave Dill

Testimony of Sally Smith

c. Plaintiff was injured.

Not Contested

d. Defendant's breach was the proximate cause of Plaintiff's injury.

Not Contested

C. **THIRD CLAIM:** The debt should not be discharged because the debt was obtained by willfully and maliciously injuring another. (523(a)(6))

1. ELEMENTS OF THE CLAIM

a. Defendant committed an intentional act.

Not Contested

b. Defendant knew or reasonably should have known that his actions would cause injury to Plaintiff.

Contested

Plaintiff: The Defendant knows that my salary is very low. He also knows that the \$5,000 was over one-half of my life savings.

Evidence:

Testimony of Joan Jones

Defendant: I had absolutely no reason to believe that Plaintiff would be injured

if I didn't repay the loan. I thought she was extremely wealthy. She was constantly buying expensive clothing, jewelry, and furniture. Her most recent purchase was a \$70,000 Porsche.

Evidence:

Testimony of Dave Dill

Testimony of Sally Smith

c. Defendant's act caused Plaintiff's injury.

Not Contested

d. Defendant's action was the proximate cause of Plaintiff's injury.

Not Contested

III. EXHIBITS TO BE OFFERED BY EACH PARTY AND OBJECTIONS TO EXHIBITS

A. PLAINTIFF'S EXHIBITS: Plaintiff's exhibits are attached to this order as Appendix 1. Defendant stipulates to the admission and authenticity of the exhibits listed in Appendix 1 [and contests the admissibility of the exhibits listed in the concurrently filed "Motion to Exclude Evidence."] Include the language in brackets ONLY if there are objections to the admission of exhibits.

B. DEFENDANT'S EXHIBITS: Defendant's exhibits are listed in and attached to Appendix 2 of this order. Plaintiff stipulates to the admission and authenticity of the exhibits listed in Appendix 2.

1 If there is a dispute as to the authenticity or admissibility of either party's exhibits, the
2 objecting party shall file and serve concurrently with this pre-trial stipulation any motion to exclude
3 evidence with a supporting memorandum of points and authorities. Any response to the motion
4 shall be filed and served two court days prior to the pre-trial conference. All objections to the
5 admission of exhibits shall be resolved at the pre-trial conference. The failure to so object to the
6 admission of exhibits listed on Appendices 1 and 2 shall be deemed a waiver of any objection.

7 **IV. WITNESSES TO BE OFFERED BY EACH PARTY**

8 A. Plaintiff:

9 A list of the only witnesses Plaintiff shall call to testify at trial, a summary of their intended
10 testimony, and an estimate of the length of direct and cross-examination is attached to this order as
11 Appendix 3.

12 B. Defendant:

13 A list of the only witnesses Plaintiff shall call to testify at trial, a summary of their intended
14 testimony, and an estimate of the length of direct and cross-examination is attached to this order as
15 Appendix 4.

16 **V. REBUTTAL TESTIMONY**

17 Plaintiff, who has the burden of establishing each element of its claim(s) for relief, will be
18 the first to introduce evidence to prove the facts necessary to enable Plaintiff to recover. When
19 Plaintiff rests, Defendant may then present evidence to contravene any of Plaintiff's claims or in
20 support of any affirmative defenses which the Defendant has included in this pre-trial stipulation.
21 After the close of Defendant's case, Plaintiff may present rebuttal testimony only to counter evidence
22 previously submitted by Defendant on issues not raised in Plaintiff's original presentation of its case.

23 **STIPULATION**

24 The foregoing admissions have been made by the parties, and the parties have specified the
25 foregoing issues of fact and law remaining to be litigated. Therefore, this order shall supersede the
26 pleadings and govern the course of trial in this adversary proceeding, unless modified to prevent

manifest injustice.

IT IS SO STIPULATED.

Dated: _____

Attorney for Plaintiff

IT IS SO STIPULATED.

Dated: _____

Attorney for Defendant

ORDER

IT IS SO ORDERED.

DATED:

VINCENT P. ZURZOLO
United States Bankruptcy Judge

APPENDIX 1

PLAINTIFF OFFERS:

Exhibit #1: Canceled Check dated 10/1/20[xx]

Defendant stipulates to Plaintiff's Exhibit #1

APPENDIX 2

DEFENDANT OFFERS:

Exhibit #2: Expense report dated 10/15/20[xx]

Plaintiff objects to Defendant's Exhibit #2. *(See attached model for motion to exclude evidence.)*

APPENDIX 3

PLAINTIFF'S WITNESS

1. Dan Jones - Will testify that:

A. The Plaintiff has a sterling reputation for truthfulness in the community.

B. The Plaintiff and Defendant have a loving, trusting relationship.

C. The Plaintiff is not a wealthy woman.

Estimated Direct: 30 minutes

Estimated Cross-examination: 45 minutes

APPENDIX 4

DEFENDANT'S WITNESSES

1. Dave Dill - Will testify:

A. That the defendant has a good reputation in the community.

B. The defendant is not a person who would mislead someone, and if he did, it would not have been intentional.

C. Plaintiff and Defendant fought on many occasions during the months prior to the end of their relationship.

D. Plaintiff and Defendant did not have a loving, trusting relationship.

Estimated Direct: 30 minutes

Estimated Cross-examination: 45 minutes

2. Sally Smith - Will testify:

A. She is a business associate of the Defendant's. They were on a business trip together.

B. Plaintiff has frequently called Defendant at work. If the Defendant was not available, the Plaintiff would scream obscenities into the phone, and slam down the receiver.

C. She helped the Defendant locate an apartment.

D. She has frequently seen the Plaintiff wear expensive designer clothing and jewelry.

Estimated Direct: 45 minutes

Estimated Cross-examination: 1 hour

**MOTION TO EXCLUDE EVIDENCE (*to be filed as a separate document*)
AND RESPONSE**

Plaintiff moves to exclude Defendant's Exhibit #2 based upon the following:

1. It has not been properly authenticated (FRE 901)
2. It is hearsay (FRE 801)
3. It violates the Best Evidence Rule (FRE 1001)

Defendant's response to the above motion is:

1. The expense report will be authenticated by the Defendant at trial.
2. The expense report is not hearsay, because it falls within the business record exception (FRE 803(6)).
3. The expense report does not violate the Best evidence rule because a duplicate is admissible to the same extent as the original (FRE 1003)

**JUDGE ZURZOLO'S PROCEDURES REGARDING
TRIAL EXHIBITS**

Please read the attached Rule 9013-2 regarding trial exhibits.

Note: If these instructions are not followed explicitly, you may be liable for sanctions.

Exhibit tags may be obtained from either the calendar clerk on the 9th floor or the court recorder prior to the trial.

TRIAL BRIEFS AND EXHIBITS.

Rule 9013-2

(a) TRIAL BRIEFS.

Unless otherwise ordered by the Court, at least five (5) Court days before trial is scheduled to commence, each counsel may file and serve a trial brief which may contain:

- (1) A concise statement of the facts of the case;
- (2) All admissions and stipulations;
- (3) A short summary of the points of law involved, citing authorities in support thereof; and
- (4) Any anticipated evidentiary problems.

In appropriate cases, the court may require submission of trial briefs.

(b) TRIAL EXHIBITS.

Unless otherwise ordered by the Court, all trial exhibits shall be numbered as set forth in Local Bankruptcy Rule 1002-1(f) and marked for identification with tags available from the Clerk's Office. (*Tag should be placed on the back of the document.)

It shall be the responsibility of all parties presenting exhibits to tag the exhibits and prepare an "exhibit register" on the form available from the Clerk's Office prior to the hearing.

The tagged exhibits and completed "exhibit register" are to be turned over in the courtroom to the Court Room Deputy or Court Recorder prior to the beginning of the hearing.

Each party shall bring sufficient copies (*five copies) of each exhibit for all counsel, the witness and the Judge.

*this language is not part of the original Local Rules, but is a part of Judge Zurzolo's instructions.

1 ATTORNEY FOR: _____
2

3 **United States Bankruptcy Court**
4 **Central District of California**

5
6 In re:

7
8 Debtor(s)

9
10 Plaintiff/Movant(s)

11 v.

12 Defendant/Respondent(s)

Case No. _____

Adversary/Motion No. _____

Chapter 7 11 13

EXHIBIT REGISTER AND NOTICE

RE: DISPOSITION OF EXHIBITS

Hearing Date: _____

Time: _____

Place: _____

13 **LIST OF EXHIBITS (*Numbered, Tagged and a Brief Description)**

- 14 1. _____
15 2. _____
16 3. _____
17 4. _____
18 5. _____
19 6. _____
20 7. _____
21 8. _____
22 9. _____
23 10. _____
24 11. _____
25 12. _____
26 13. _____
14. _____
15. _____

** Exhibits of Plaintiff/Movant shall be marked numerically*

** Exhibits of Defendant/Respondent shall be marked alphabetically B-3024 Rev. 2/21/96 A.S.*

NOTICE RE: DISPOSITION OF EXHIBITS

Notice is hereby given that exhibits presented to the Court must be withdrawn from the Clerk's Office after the expiration of the time for appeal, or where no appeal is taken, entry of a stipulation waiving or abandoning the right to appeal, final disposition of the appeal, or by order of the Court, (Rule 5003-2(b)). Exhibits must be withdrawn within 30 days of this notice. Exhibits which are not withdrawn shall be destroyed.

DATED: _____

JON D. CERETTO
CLERK OF COURT

By: _____
Deputy Clerk

Disposed of on _____

Deputy Clerk _____

Withdrawn on _____

By: _____